

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB38

Endangered and Threatened Wildlife and Plants; Proposed Rule to List *Potamogeton Clystocarpus* as Endangered**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list *Potamogeton clystocarpus* (Little Aguja Creek pondweed), as an endangered species under the authority of the Endangered Species Act of 1973 (Act), as amended. This plant is known from a single canyon in the Davis Mountains of Texas. The three populations in the intermittent stream are threatened by changes in water quality and trampling of the streambed by cattle. This proposal, if made final, would implement Federal protection provided by the Act for *Potamogeton clystocarpus*.

DATES: Comments from all interested parties must be received by May 14, 1990. Public hearing requests must be received by April 30, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, c/o Corpus Christi State University, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Philip Clayton, at the above address (512/888-3346 or FTS 529-3346).

SUPPLEMENTARY INFORMATION:**Background**

Potamogeton clystocarpus is a member of the pondweed family (Potamogetonaceae) and is endemic to a single intermittent stream in Little Aguja Canyon in the Davis Mountains of Texas. The plant occurs in isolated, quiet pools of water in igneous derived alluvium in the streambed draining Little Aguja Canyon, which is deep and rocky. The subterranean stream surfaces in only a few places. Most of its course is underground through gravel bars. Potential habitat is limited to only a few deep pools (Kenneth Wurdack, *in litt.*) with sufficient light levels. Associated

species include *Potamogeton foliosus*, *P. pectinatus*, (Sago pondweed), *P. pusillus*, *P. nodosus*, and *Najas guadalupensis* (Guadalupe water nymph) (Rowell 1983). The population occurs within the Trans Pecos Biotic Community (Gould 1975).

Potamogeton clystocarpus is an aquatic plant with a slender branched, rounded to slightly compressed stem, usually with a pair of small translucent glands at the nodes. Leaves are submerged, linear, light green, and translucent to sub-opaque, and 2-4.5 inches (5-11.5 cm) long. Peduncles are thread-like; spikes are emergent while flowering, but submerged while fruiting; cylindrical, and about 3/8 inch (0.95 cm) long, with 2 or 3 whorls of flowers. Fruits have 2 or more warty protuberances at the base, and develop from early May to October, or later.

The only known extant populations are from scattered quiet pools of water in an intermittent stream in the Little Aguja Canyon in Jeff Davis County, Texas. Many quiet pools of water are present in the stream bed of Little Aguja Canyon, but the species has a very scattered distribution. Where present, it is generally in a small isolated population (Rowell 1983). Three collection localities for *Potamogeton clystocarpus* are known. They occur on land owned by the Boy Scouts of America and a private ranch. Both landowners were informed by letter of the presence of the plant on their land, the anticipated proposal, and how they may be affected.

Rowell (1983) made repeated trips to the area and examined pools in adjacent canyons. He found populations in only two pools in Little Aguja Canyon on land owned by the Boy Scouts of America. He also examined Limpia Creek, also in the Davis Mountains of Jeff Davis County, but did not find this species in any of its pools. A graduate student from Sul Ross State University completed a floristic study of the area including lower Little Aguja Canyon (Powell, *in litt.*). During her study of the distribution of *P. clystocarpus* (1985-87), she located one population on property owned by the Boy Scouts of America, and two populations on property owned by a private ranch (Allen, *in litt.*). Because permanent water sources in the area have been examined thoroughly, it is unlikely that additional populations outside of the canyon will be discovered in the future (Wurdack, *in litt.*).

Potamogeton clystocarpus was first collected in 1931 by Moore and Steyermark. The species was described by Fernald (1932) based on its large sepeloid connectives and distinctive fruit having swollen and tuberculate

bases (Haynes 1974). The only other species with fruits similar to *P. clystocarpus* occur in Eurasia and Africa.

Potamogeton clystocarpus is threatened throughout its range by cattle trampling and possible changes in water quality (Wurdack *in litt.*). Cattle may also eat the plants. Pondweeds (*Potamogeton* spp.) are a significant source of food for ducks and numerous aquatic invertebrates (Haynes 1974). The very small range of distribution and lack of legal protection for this species contribute to the severity of existing threats.

Federal government actions on this species began with section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. *Potamogeton clystocarpus* was included as "endangered" in the July 1, 1975, petition. On July 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of this Act; *Potamogeton clystocarpus* was included in this proposal.

The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn. On December 10, 1979 (44 FR 70796), the Service published a notice withdrawing plants proposed on June 16, 1976. *Potamogeton clystocarpus* was included as a category 1 species in the revised notice of review for native plants published on December 15, 1980 (45 FR 82480). Category 1 species are those for which the Service has substantial information on biological vulnerability and threat(s) to support the appropriateness of proposing to list them as endangered or threatened. When the notice of review for native plants was again revised in 1983 (48 FR 53640), *P. clystocarpus* was included as a category 2 species, which are those species for which the Service has information that indicates that proposing to list them as endangered or threatened may be appropriate but for which substantial data on biological vulnerability and threats are not currently known or on file to support the

preparation of rules. In the 1985 revised notice of review for native plants (50 FR 39526), *P. clystocarpus* was returned to Category 1. The Service funded a status survey to determine the status of *P. clystocarpus*, and the final report for this survey was accepted by the Service in 1983. Additional information on the status of the species throughout its range and on threats to its continued existence have now been obtained by the Service.

All plants included in the comprehensive plant notices are treated as under petition. Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because the 1975 Smithsonian report was accepted as a petition, all the taxa contained in the notice, including *P. clystocarpus*, were treated as being newly petitioned on October 13, 1982. In 1983, 1984, 1985, 1986, 1987, 1988, and 1989, the Service found that the petitioned listing of *Potamogeton clystocarpus* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats were still being gathered. This proposal constitutes the final 1-year finding as required by the 1982 amendments to the Endangered Species Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Potamogeton clystocarpus* (hereinafter "the species") are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. Little Aguja Creek pondweed is threatened throughout its range by cattle trampling and possible changes in water quality. At least one stream pool is a favorite cattle watering hole and shows heavy traffic around its fluctuating edge. Plants are uprooted in the pool. The main damage from cattle is in the deterioration of water quality. The cattle deposit large quantities of manure around the pool, and the subsequent

nutrient leaching causes an explosion in algal growth. As a result, the pool surface is covered with green scum and in the still pool drainage the *Potamogeton clystocarpus* plants are invisible under a choking cloak of algae. Algae-loaded plants also show a tendency to break off their root systems in the stream currently due to the increased surface area. If these pieces of *P. clystocarpus* come back in contact with the substrate, they may reroot, but this probably rarely happens. It is even less likely that a root system will sprout new foliage (Wurdack *in litt.*).

B. Overutilization for commercial, recreational, scientific, or educational purposes. None known, although recreational activities that would impact the streambed and scientific collecting would both have adverse effects on this plant.

C. Disease or predation. Cattle trample ponds in the bottom of Little Aguja Canyon, uprooting plants in the streambed. The cattle may also eat the plants.

D. The inadequacy of existing regulatory mechanisms. There are no existing Federal or State laws that protect *P. clystocarpus*. The Act would provide protection and encourage active management through the "Available Conservation Measures" discussed below.

E. Other natural or manmade factors affecting its continued existence. *Potamogeton clystocarpus* is a relic aquatic plant in an arid environment. Its existence is precarious, even without additional stress. Historically, the plant has had a marginal existence because of the abrasive action of floods (Wurdack *in litt.*). Any change in land use practices that might result in permanent change in the canyon would have an adverse effect on this species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Potamogeton clystocarpus* as endangered. With only three populations known, the species is in imminent danger of extinction. *P. clystocarpus* is vulnerable to damage from cattle, including changes in water quality and trampling of streambeds. The plant is not protected by Federal or State law. Critical habitat is not being proposed for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary

propose critical habitat at the time the species is proposed to be endangered or threatened. The populations of this species are small, and loss of even a few individuals to activities such as collection for scientific purposes could extirpate the species from some locations. Publication of critical habitat description and maps would increase the vulnerability of the species without significantly increasing protection. The owners and managers of all the known populations of *Potamogeton clystocarpus* have been notified of the species' location and of the importance of protecting the species and its habitat. Therefore, the Service concludes that it is not prudent to designate critical habitat for *Potamogeton clystocarpus*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants, are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. All of the known populations of *Potamogeton*

clystocarpus are on privately-owned land. There are no known current or planned Federal activities that may affect this species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violations of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, VA 22201 (703/358-2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (See **ADDRESSES**).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared

in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

Reference Cited

- Gould, F.W. 1975. Texas Plants: a checklist and ecological summary. Texas Agricultural Experiment Station, Texas A&M University, College Station, Texas.
Haynes, R.R. 1974. A revision of North American *Potamogeton* subsection Pusilli (Potamogetonaceae). *Rhodora* 76: 624-626.
Rowell, C.M., Jr. 1983. Status report, *Potamogeton clystocarpus* Fern. U.S. Fish and Wildlife Service, Albuquerque, NM. 9pp.

Author

The primary author of this proposed rule is Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico (505/766-3972 or FTS 474-3972).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following in alphabetical order, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

(h)* * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Potamogetonaceae	Pondweed					
family:						
<i>Potamogeton clystocarpus</i>	Little Aguja Creek pondweed	U.S.A. (TX)	E	NA	NA

Dated: February 20, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

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